

195. In 1994, Paragon began proposing to the owners of all new buildings that it would construct and install a conduit system in return for Paragon's exclusive "right and privilege to utilize, and install equipment or facilities in, the conduit system, including inside any junction boxes, pull boxes, lock boxes or gem boxes appurtenant to the conduit system"

196. As stated, a competing MVPD such as Liberty which is denied access to building conduit is effectively blocked from providing competing cable service to a building. It would have to construct a second redundant system, a process which building owners will not tolerate. If, on the other hand, Liberty owned or obtained exclusive access to building conduit, Time Warner would be free to make any additional installation it needed to deliver cable. This is true because, as a franchised cable system, Time Warner can invoke provisions of New York law which guarantee a right of entry to franchised Cable TV operators, such as Time Warner.

Time Warner Manipulated the Tap Side Access
Requirement to Block Liberty

197. The 1990 Franchise Agreements between Time Warner and New York City added a new "tap side" access requirement to facilitate competition between Time Warner and alternative MVPDs. Before 1990, the video transmission systems of many New York buildings included cable and wiring accessible only within the apartments of building residents. An MVPD needed to gain access to individual apartments in order to install service or switch one MVPD for another. Because many of these older systems were wired "in sequence" or in so-called "loop-through" fashion, an MVPD would have to gain access to Apartment A in order to install or switch the MVPD for Apartment B or Apartments B through F. This seriously retarded both installation and conversion from one MVPD to another. The 1990 tap-side Franchise requirement provided that "all system cabling and wiring in any structure shall be accessible

from the 'tap side' in a public hallway, roof, basement, stairwell, or other public area in said structure." Although the purpose of the tap side requirement was pro-competitive and salutary, buildings disliked it. It was particularly despised by the residents of luxury condominiums and cooperatives because of the way Time Warner fulfilled this requirement. Time Warner installed unsightly industrial grade hallway moldings, which were perceived to detract from the design of the public areas within these luxury buildings.

198. Time Warner manipulated the tap side access requirement to the detriment of Liberty and competition in several ways.

199. In numerous instances, Time Warner informed cooperative and condominium apartment buildings that it would will either ignore the tap side requirement or arrange to obtain a waiver from DOITT if the building terminated negotiations with Liberty.

200. Time Warner has illegally offered to waive the tap-side franchise requirement for a large group of properties under common ownership in the borough of Queens. The owner of these building has opted for Liberty service in certain of its Manhattan properties and Time Warner moved to prevent the same result in the Queens apartment buildings.

201. In other instances, however, Time Warner hastened fulfillment of the tap side requirement by installing unsightly industrial molding. This was a punishment to buildings which allowed Liberty to provide competing video service. Time Warner has done this even in buildings where there were no Time Warner subscribers

Time Warner Unlawfully Refuses
to Terminate Its Use of MATV Systems

202. New York law and the 1990 Franchise Agreements require Time Warner to cease using building MATV systems in the delivery of its service.

203. These requirements are designed to give building residents several competitive options. If the building allows an alternative MVPD such as Liberty to deliver its signal via the building's MATV infrastructure, then residents have a choice of Time Warner service and alternative video service. The building may also opt to simply allow its residents a choice between Time Warner and the enhanced reception of broadcast television over the MATV system.

204. Although six years have passed since Time Warner contractually committed to vacate MATV Systems, as of March 8, 1996, Time Warner still violated this requirement in numerous buildings in order to keep building residents from having a choice between Time Warner and Liberty.

Time Warner Interferes With
Liberty's Employment Contracts

205. Another prong in Time Warner's predatory campaign involved its practice of interfering with Liberty's employment relationships

206. In 1992, Liberty hired a Project Manager to supervise the construction of all new Liberty systems. The day prior to the agreed-upon starting date, the Project Manager called to say that he and his wife had been deluged by more than 20 telephone calls from Time Warner affiliates, including his brother, a Time Warner manager in Rochester, New York. Time Warner apparently contacted the brother and asked him to apply pressure. The callers attempted to dissuade him from working for Liberty. He then resigned the new position.

207. Later in 1992, Gerald Levin, Time Warner's Chief Executive Officer, met with Peter Price, Liberty's President, and tried to persuade Mr Price to leave Liberty and/or to alter Liberty's plans to compete head-to-head with Time Warner.

**Time Warner Persistently Waged a Campaign of Threats
against Actual and Potential Liberty Subscribers**

208. In addition to Time Warner's predatory, exclusionary and anticompetitive acts, which fall into the above categories, defendant also persistently waged a campaign of threats and dirty tricks against actual and potential Liberty subscribers.

209. The purpose and effect of this campaign -- and indeed Time Warner's entire regime of predation and exclusion -- was to punish buildings and subscribers who opted for Liberty, so that other potential customers would be dissuaded from making the same choice. This highly successful campaign of threats and dirty tricks included the following acts among many others.

210. Time Warner continued to illegally bill subscribers who abandoned Time Warner service for Liberty.

211. Time Warner is required by law to cease billing a customer within three days of receiving an oral or written notice that the customer wishes to terminate service.

212. When a customer wishes to terminate service for any reason other than switching to Liberty, Time Warner generally complies with this "three-day rule."

213. Time Warner consistently and intentionally violated the three-day rule when subscribers requested termination of Time Warner service in conjunction with obtaining Liberty service.

214. Time Warner ignored written service termination requests by continuing to bill well beyond the requirements of the three-day rule.

215. When Time Warner received instructions to terminate service, it responded by sending letters to the subscribers inviting them to reconsider, republishing many of the

falsehoods about Liberty discussed above, and telling subscribers that billing would not cease until Time Warner collected its equipment and got around to "terminating" its line. All this violated the three-day rule.

216. Time Warner also inaccurately and illegally warned departing customers that neither the customer nor the customer's designated agent could disconnect their own TV and/or VCR from the Time Warner converter box.

217. To further prolong the agony of divorcing from Time Warner, defendant adopted special procedures for the return of its converter boxers. These procedures were utilized only when subscribers were returning Time Warner converters when switching to Liberty video service. Instead of following its general practice of allowing these converters to be returned at designated, convenient neighborhood locations such as *Tower Video*, Time Warner required the converters to be returned to a central, inconvenient drop-off point by appointment only. Defendant further limited mass returns to twenty converters ~~per~~ scheduled appointment.

218. As a result of a tacit or actual agreement, Time Warner and its co-conspirator, Cablevision, have adopted virtually the same procedures for abusing subscribers who request termination of their service for Liberty service.

219. In January 1996, an association representing scores of cooperative apartment buildings and thousands of cooperative residents in the Bronx complained to New York City about Cablevision's abusive monopolistic and anticompetitive tactics in this regard.

220. The "flip-side" of Time Warner's pattern of illegally billing customers switching to Liberty well beyond the three-day rule, is Time Warner's illegal practice of prematurely terminating service to customers who inform Time Warner that they are switching to Liberty.

221. One example of this practice occurred in 1995. The Westbury Hotel located in Manhattan informed Time Warner that it wished to terminate Time Warner's service on a specified date. Several days prior to this date, Time Warner terminated service to the hotel and its several hundred guests without notice. This loss of video service at a luxury hotel was designed to punish the hotel and spread the message that other hotels and commercial properties could suffer a similar, costly and embarrassing fate if they abandoned Time Warner.

222. Another instance of Time Warner's terror campaign with hotels was the threat delivered in 1995 to one of the premiere chains of luxury hotels in the United States. When the New York location of this hotel chain switched from Time Warner to Liberty service, Time Warner told the hotel's general manager that Time Warner's personnel annually accounted for 4000 room-nights in the chain and threatened that this business would be withdrawn unless the hotel returned to the Time Warner fold.

223. Time Warner does not limit its threats and leverage to hotels. In the fall of 1995, when it became public that the World Trade Center had contracted with Liberty for video services, George Marlin, the Chairman of the Port Authority (which owns the World Trade Center), was visited by two officers of Time Warner. They reminded Marlin how much Time Warner paid to and meant to New York City and began to "threaten" and "brow beat" him. Marlin told them that the Port Authority was not an organ of City government. The Port Authority and Marlin stood their ground and opted for Liberty's service over Time Warner's, but such independence and bravery is the exception rather than the rule. More often buildings and entities succumb to the consistent pressure, threats and leverage applied by Time Warner.

224. In 1995, the New York Corporation for Public Broadcasting affiliate, *WNET*, Channel 13, pulled out of a proposed educational programming joint venture with Liberty

because of the fear of retaliation from Time Warner and its co-conspirator, Cablevision. These Cable TV monopolists are crucial to the effective distribution of Channel 13 in the metropolitan area. The joint venture, called the THIRTEEN Education/Arts Network, would have been majority-owned by WNET, but primarily funded by Liberty and offered to all cable operators -- including Time Warner and Cablevision. After agreeing to the joint venture in principle, the Board of WNET felt constrained to preview the proposal to the chief executive officers of Time Warner and Cablevision. After doing so, WNET terminated the project, depriving the public of sorely needed children's and educationally-oriented programming.

225. One of Time Warner's most consistent terror tactics is to dispatch teams of influential lawyers, accountants and financial consultants to deliver threats to those considering business relationships with Liberty. A high-level financial consultant has been dispatched to numerous buildings threatening litigation if the buildings allow Liberty to compete with Time Warner for subscribers.

226. Time Warner does not merely threaten. As noted above, Time Warner and co-conspirator, Cablevision, have filed and then failed to prosecute or withdraw objectively baseless and sham litigation against buildings which have opted for Liberty service.

227. The climate of fear and intimidation carefully and persistently nurtured by Time Warner, and typified by the acts described above, have led thousand of buildings with hundreds of thousands of residential and commercial tenants to abandon the pursuit of superior and far less costly multichannel video service from Liberty

RELEVANT MARKETS

228. The distribution and sale of multiple channels of video programming by MVPDs to subscribers and customers is the product dimension of the two relevant markets. The geographic dimensions of these markets are the New York City boroughs of Queens and Manhattan, congruent with the geographic scope of the cable television franchises created and awarded by the City of New York. MVPD services in Manhattan is a relevant market. MVPD services in Queens is a relevant market.

229. Multichannel video programming distributors (MVPDs) as defined in 47 U.S.C. § 522(12) such as Time Warner, co-conspirator Cablevision and Liberty “make available for purchase, by subscribers or customers multiple channels of video programming” which typically involve both non-broadcast channels and broadcast channels, which are available over-the-air, but are retransmitted by the MVPD to its customers and subscribers.

230. The Communications Act defines specific market factors which govern whether or not MVPDs such as Time Warner’s Queens and Manhattan cable systems are subject to “effective competition” (47 U.S.C. § 543(l)(1)) either from other MVPDs, such as Liberty or other distributors of news, sports, and entertainment.

231. The Communications Act thus contains what in antitrust and economic terms is referred to as a provisional or presumptive relevant market definition, provisionally defining such a market as MVPD services within the franchise area of a cable system. The Act then goes on to specify market conditions which will rebut the statutory market definition presumption. If franchised cable systems serve fewer than 30 % of the households in the franchise area, because they either purchase video service from other MVPDs or do not subscribe to any MVPD service, and at least 15% of the households in the franchise area subscribe to an MVPD other than the

“largest” MVPD in the franchise area, the statute concludes that franchised cable systems within the geographic area of the franchise are subject to “effective competition.”

232. In both the Queens and Manhattan franchise areas, well over 50% of the households subscribe to Time Warner cable service. Moreover all other MVPDs within these franchise areas do not collectively serve even 2% of these households, with Liberty accounting for most of this minimal market share.

233. Supported by massive legislative findings, the Communications Act compelled the legal determination that under the conditions which obtain in Queens and Manhattan, MVPD services constitutes a relevant product market. The statute also mandates the conclusion that within these markets, Time Warner is not subject to “effective competition.” These markets also satisfy all other legal and economic criteria for relevance

234. Customers and subscribers of MVPD services exhibit highly inelastic demand behavior. They do not consider broadcast television, which by definition does not contain the 50 or more non-broadcast channels typically delivered by an MVPD, to be a suitable substitute for the non-broadcast programming and enhanced reception retransmitted broadcast channels afforded by MVPD service. Neither do they consider other forms of news, sports or entertainment to be suitable substitutes to MVPD services either as a cluster of programming or individually.

235. Customers and subscribers of MVPD services will substitute one cheaper and/or superior MVPD for another. Generally, MVPD subscribers will not substitute non-MVPD services for MVPD services in response to significant price increases. The small minority of MVPD subscribers who will stop subscribing or switch to other forms of entertainment when

prices rise significantly do not make such price increases unprofitable. Therefore, in economic terms, MVPD service is the product dimension of one or more relevant markets.

236. In economic terms, the geographic dimension of these markets is congruent with established franchised areas for cable systems, in as much as Cable TV has been and is currently the dominant form of MVPD service. This is consistent with the findings of Congress, which enacted 47 U.S.C. § 522(l)(1). This also comports with the economic reality that customers and subscribers of MVPD services purchase these from MVPDs who operate where they live, or where they work. Such MVPD service customers will not move or relocate their businesses in response to significant price increases by MVPDs, or will not do so in sufficient numbers to render such price increases unprofitable. MVPD services within the geographic area of established cable franchises are relevant markets.

237. The Queens and Manhattan MVPD markets also satisfy all of the legal criteria for relevance, which are in fact merely legal surrogates for and ~~amplifications~~ amplifications of the economic criteria recognized by the antitrust laws. These markets are recognized by the industry and by the public as distinct markets and distinct economic entities. Much of the programming content of individual non-broadcast channels has distinct and peculiar characteristics and uses. This is also true for the cluster of programming services provided by MVPDs. MVPD service has distinct customers, unique distribution facilities, distinct prices and specialized vendors, which the law and industry refer to as MVPDs, but the public generally refers to as "cable service" and/or the oxymoron, "wireless cable service."

FIRST CLAIM FOR RELIEF
SHERMAN ACT SECTION 2 - MONOPOLIZATION

238. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 228 with the same force and effect as if here set forth in full.

239. In violation of Section 2 of the Sherman Act, 15 U.S.C. § 2 ("Section 2"), Time Warner, at times acting in concert with co-conspirators, has willfully and consciously monopolized the markets specified above (the "relevant markets") by possessing and maintaining a monopoly in the relevant markets through predatory, exclusionary and anticompetitive means and actions other than those honestly industrial.

240. The monopolization of these relevant markets has been effected by the means and overt acts set forth above, among others.

241. Defendants and others acting in concert with them intended by their actions to:

- (a) Control the supply and price of MVPD services in the relevant markets;
- (b) eliminate actual and potential competition in said markets;
- (c) exclude and foreclose other persons from participating in or entering said markets; and
- (d) injure and eliminate competition in said markets.

242. As a result of the conduct alleged herein, Time Warner controls price, has and is able to exclude competitors and competition and has and is able to charge supra-competitive prices in the relevant markets.

243. These acts of monopolization have had, and/or are likely to have, among other things, the following effects:

- (a) Actual and potential competition in the relevant markets has been restrained, suppressed and eliminated;
- (b) customers and subscribers of MVPD services have paid and are likely to pay artificially inflated prices;
- (c) actual and potential competitors of Time Warner and co-conspirators Cablevision and TCI, including plaintiffs have been injured in their business and property; and
- (d) instead of free, open and competitive markets, a monopoly in said relevant markets has been established and maintained.

244. As a result of defendants' violations of Section 2, plaintiffs have been injured in their business and property in an amount, not presently known, but which is, at a minimum, several hundred million dollars.

SECOND CLAIM FOR RELIEF
SHERMAN ACT SECTION 2 - ATTEMPT TO MONOPOLIZE

245. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 235 with the same force and effect as if here set forth in full.

246. In violation of Section 2, defendants at times acting in concert with co-conspirators, has knowingly, intentionally and with specific intent to do so, attempted to monopolize the relevant markets.

247. The attempts to monopolize these markets have been effected by the means and the overt acts set forth above, among others.

248. Time Warner, and others acting in concert with it intended by their actions to:

- (a) Control the supply and price of MVPD services in the relevant markets;
- (b) eliminate actual and potential competition in said markets;
- (c) exclude and foreclose other persons from participating in or entering said markets; and
- (d) injure and eliminate competition in said markets.

249. As a result of the conduct alleged herein, Time Warner controls such a substantial share of the relevant markets and exercises power in these markets to such a substantial degree that when coupled with defendants' predatory and exclusionary conduct, a dangerous likelihood existed and exists that defendants would and will monopolize the relevant markets.

250. These attempts to monopolize have had, or are likely to have, among other things, the following effect:

- (a) Actual and potential competition in ~~the~~ relevant markets has been restrained, suppressed and eliminated;
- (b) customers and subscribers of MVPD services have paid and are likely to pay artificially inflated prices;
- (c) actual and potential competitors of Time Warner and co-conspirators Cablevision and TCI, including plaintiffs have been injured in their business and property; and
- (d) instead of free, open and competitive markets, a monopoly in said relevant markets has been established and maintained.

251. As a result of defendants' violations of Section 2, plaintiffs have been injured in their business and property in an amount, not presently known, but which is, at a minimum, several hundred million dollars.

THIRD CLAIM FOR RELIEF
SHERMAN ACT SECTION 2 - CONSPIRACY TO MONOPOLIZE

252. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 242 with the same force and effect as if here set forth in full.

253. In violation of Section 2, Time Warner, acting in concert with co-conspirators, willfully, knowingly, intentionally and with specific intent to do so, combined and conspired to monopolize the relevant markets.

254. The combinations and conspiracies have been affected by the means and overt acts set forth above, among others.

255. Defendants and co-conspirators intended by their actions to:

- (a) Control the supply and price of MVPD services in the relevant markets;
- (b) eliminate actual and potential competition in said markets;
- (c) exclude and foreclose other persons from participating in or entering said markets; and
- (d) injure and eliminate competition in said markets.

256. As a result of the conduct alleged herein, Time Warner controls price, has and is able to exclude competitors and competition and has and is able to charge supra-competitive prices in the relevant markets.

257. The combinations and conspiracies have had and/or are likely to have, among other things, the following effects:

- (a) Actual and potential competition in the relevant markets has been restrained, suppressed and eliminated;
- (b) customers and subscribers of MVPD services have paid and are likely to pay artificially inflated prices;
- (c) actual and potential competitors of Time Warner and co-conspirators Cablevision and TCI, including plaintiffs, have been injured in their business and property; and
- (d) instead of free, open and competitive markets, monopolies in said relevant markets have been established and maintained.

258. As a result of defendants' violations of Section 2, plaintiffs have been injured in their business and property in an amount, not presently known, but which is, at a minimum, several hundred million dollars.

FOURTH CLAIM FOR RELIEF
THE DONNELLY ACT - MONOPOLIZATION

259. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 249 with the same force and effect as if here set forth in full.

260. In violation of the Donnelly Act, New York General Business Law § 340, Time Warner, acting in concert with its co-conspirators has willfully and consciously monopolized the relevant markets by possessing and maintaining a monopoly in the relevant markets through predatory, exclusionary and anticompetitive means and actions other than those honestly industrial.

261. The monopolization of these relevant markets has been effected by the means and overt acts set forth above, among others.

262. Defendants and others acting in concert with them intended by their actions to:

- (a) Control the supply and price of MVPD services in the relevant markets;
- (b) eliminate actual and potential competition in said markets;
- (c) exclude and foreclose other persons from participating in or entering said markets; and
- (d) injure and eliminate competition in said markets.

263. As a result of the conduct alleged herein, Time Warner controls price, has and is able to exclude competitors and competition and has and is able to charge supra-competitive prices in the relevant markets.

264. These acts of monopolization have had, and/or are likely to have, among other things, the following effects:

- (a) Actual potential competition in the relevant markets has been restrained, suppressed and eliminated;
- (b) customers and subscribers of MVPD services have paid and are likely to pay artificially inflated prices;
- (c) actual and potential competitors of Time Warner and co-conspirators Cablevision and TCI, including plaintiffs have been injured in their business and property; and
- (d) instead of free, open and competitive markets, a monopoly in said relevant markets has been established and maintained.

265. As a result of defendants' violations of the Donnelly Act, plaintiffs have been injured in their business and property in an amount, not presently known, but which is, at a minimum, several hundred million dollars.

FIFTH CLAIM FOR RELIEF
THE DONNELLY ACT - ATTEMPT TO MONOPOLIZE

266. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 256 with the same force and effect as if here set forth in full.

267. In violation of the Donnelly Act, Time Warner, acting in concert with its co-conspirators has willfully knowingly, intentionally and with specific intent to do so, attempted to monopolize the relevant markets.

268. The attempts to monopolize these relevant markets have been effected by the means and overt acts set forth above, among others.

269. Defendants and others acting in concert with them intended by their actions to:

- (a) Control the supply and price of MVPD services in the relevant markets;
- (b) eliminate actual and potential competition in said markets;
- (c) exclude and foreclose other persons from participating in or entering said markets; and
- (d) injure and eliminate competition in said markets.

270. As a result of the conduct alleged herein, Time Warner controls such a substantial share of the relevant markets and exercises power in these markets to such a degree that when coupled with defendants predatory and exclusionary conduct, a dangerous likelihood existed and exists that defendants would and will monopolize the relevant markets.

271. These attempts to monopolize have had, and/or are likely to have, among other things, the following effects:

- (a) Actual and potential competition in the relevant markets has been restrained, suppressed and eliminated;
- (b) customers and subscribers of MVPD services have paid and are likely to pay artificially inflated prices;
- (c) actual and potential competitors of Time Warner and co-conspirators Cablevision and TCI, including plaintiffs have been injured in their business and property; and
- (d) instead of free, open and competitive markets, a monopoly in said relevant markets has been established and maintained.

272. As a result of defendants' violations of the Donnelly Act, plaintiffs have been injured in their business and property in an amount, not presently known, but which is, at a minimum, several hundred million dollars.

SIXTH CLAIM FOR RELIEF
THE DONNELLY ACT - CONSPIRACY TO MONOPOLIZE

273. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 263 with the same force and effect as if here set forth in full.

274. In violation of the Donnelly Act, Time Warner, acting in concert with co-conspirators willfully, knowingly, intentionally and with specific intent to do so, combined and conspired to monopolize the relevant markets.

275. The combinations and conspiracies have been effected by the means and overt acts set forth above, among others.

276. Defendants and co-conspirators intended by their actions to:

- (a) Control the supply and price of MVPD services in the relevant markets;
- (b) eliminate actual and potential competition in said markets;
- (c) exclude and foreclose other persons from participating in or entering said markets; and
- (d) injure and eliminate competition in said markets.

277. As a result of the conduct alleged herein, Time Warner controls price, has and is able to exclude competitors and competition and has and is able to charge supra-competitive prices in the relevant markets.

278. These combinations and conspiracies have had, and/or are likely to have, among other things, the following effects:

- (a) Actual and potential competition in the relevant markets has been restrained, suppressed and eliminated;
- (b) customers and subscribers of MVPD services have paid and are likely to pay artificially inflated prices
- (c) actual and potential competitors of Time Warner and co-conspirators Cablevision and TCI, including plaintiffs have been injured in their business and property; and
- (d) instead of free, open and competitive markets, a monopoly in said relevant markets has been established and maintained.

279. As a result of defendants' violations of the Donnelly Act, plaintiffs have been injured in their business and property in an amount, not presently known, but which is, at a minimum, several hundred million dollars.

SEVENTH CLAIM FOR RELIEF
THE LANHAM ACT - FALSE ADVERTISING

280. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 270 above with the same force and effect as if here set forth in full.

281. In violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), Time Warner, has made false or misleading descriptions of fact and false or misleading statements of fact regarding the nature and qualities or character of Liberty, including Liberty's program offerings and technology (the "false and deceptive statements"). These false and deceptive statements have taken the form of actual misstatements, partially correct statements and failures to disclose. The substance of the false and deceptive statements is set forth in detail above.

282. Time Warner has made these false and deceptive statements through commercial advertising and other commercial activities involving goods and services that are in, or effect, interstate commerce.

283. Time Warner has made these false and deceptive statements with the intent to deceive and mislead buildings in New York City which are considering offering their tenants the option of subscribing to Liberty video service and consumers in such buildings as well as buildings where Liberty service is available (hereinafter collectively referred to as "Consumers") about the nature and qualities or character of Liberty, including Liberty's program offerings and technology.

284. Time Warner's false and deceptive statements have caused Consumers to be confused, misled or deceived about the nature and qualities or character of Liberty, including Liberty's program offerings and technology. Time Warner's false and deceptive statements are material because they have affected the decisions of Consumers about whether to purchase their

video programming services from Time Warner or Liberty and have, in fact, caused many Consumers to decide not to purchase their video programming services from Liberty.

285. As a result of Time Warner's deceptive statements, Liberty has suffered economic injury, loss of good will and other injuries in an amount to be determined at trial.

EIGHTH CLAIM FOR RELIEF
N.Y. GEN. BUS. LAW § 349 - DECEPTIVE ACTS AND PRACTICES

286. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 276 above with the same force and effect as if here set forth in full.

287. In violation of New York General Business Law § 349(a), which prohibits "deceptive acts or practices in the conduct of any business, trade or commerce," Time Warner, has made false or misleading descriptions of fact and false or misleading statements of fact regarding the nature and qualities or character of Liberty, including Liberty's program offerings and technology. These false and deceptive statements have taken the form of actual misstatements, partially correct statements and failures to disclose. The substance of the false and deceptive statements is set forth in detail above.

288. Time Warner's false and deceptive statements have harmed Consumers and the public interest by causing Consumers to be confused, misled or deceived about the nature and qualities or character of Liberty and Liberty's program offerings and technology. Time Warner's false and deceptive statements are material because they have affected the decisions of Consumers about whether to purchase their video programming services from Time Warner or Liberty and have, in fact, caused some Consumers to decide not to purchase their video programming services from Liberty.

289. As a result of Time Warner's deceptive statements, Liberty has suffered economic injury, loss of good will and other injuries in an amount to be determined at trial.

NINTH CLAIM FOR RELIEF
N.Y. GEN. BUS. LAW § 350 - FALSE ADVERTISING

290. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 280 with the same force and effect as if here set forth in full.

291. In violation of New York General Business Law § 350, which prohibits "false advertising in the conduct of any business, trade or commerce," Time Warner, has made false or misleading descriptions of fact and false or misleading statements of fact regarding the nature and qualities or character of Liberty, including Liberty's program offerings and technology. These false and deceptive statements have taken the form of actual misstatements, partially correct statements and failures to disclose. The substance of the false and deceptive statements is set forth in detail above.

292. Time Warner's false and deceptive statements have harmed Consumers and the public interest by causing Consumers to be confused, misled or deceived about the nature and qualities or character of Liberty and Liberty's program offerings and technology. Time Warner's false and deceptive statements are material because they have affected the decisions of Consumers about whether to purchase their video programming services from Time Warner or Liberty and have, in fact, caused some Consumers to decide not to purchase their video programming services from Liberty.

293. As a result of Time Warner's deceptive statements, Liberty has suffered economic injury, loss of good will and other injuries in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully demand judgment as follows:

294. That the Court declare, adjudge and decree that Time Warner has committed the violations of federal and state law alleged herein;

295. Awarding damages sustained by Liberty up to March 8, 1996, on the First Claim for Relief in an amount to be proved at trial, to be trebled according to law, plus interest, attorneys' fees and costs of suit;

296. Awarding damages sustained by Liberty up to March 8, 1996, on the Second Claim for Relief in an amount to be proved at trial, to be trebled according to law, plus interest, attorneys' fees and costs of suit;

297. Awarding damages sustained by Liberty up to March 8, 1996, on the Third Claim for Relief in an amount to be proved at trial, to be trebled according to law, plus interest, attorneys' fees and costs of suit;

298. Awarding damages sustained by Liberty up to March 8, 1996, on the Fourth Claim for Relief in an amount to be proved at trial, to be trebled according to law, plus interest, attorneys' fees and costs of suit;

299. Awarding damages sustained by Liberty up to March 8, 1996, on the Fifth Claim for Relief in an amount to be proved at trial, to be trebled according to law, plus interest, attorneys' fees and costs of suit;

300. Awarding damages sustained by Liberty up to March 8, 1996, on the Sixth Claim for Relief in an amount to be proved at trial, to be trebled according to law, plus interest, attorneys' fees and costs of suit;

301. Awarding damages sustained by Liberty up to March 8, 1996, on the Seventh Claim for Relief in an amount to be proved at trial.

302. Awarding damages sustained by Liberty up to March 8, 1996, on the Seventh Claim for Relief in an amount to be proved at trial.

303. Awarding damages sustained by Liberty up to March 8, 1996, on the Eighth Claim for Relief in an amount to be proved at trial.

304. Awarding damages sustained by Liberty up to March 8, 1996, on the Ninth Claim for Relief in an amount to be proved at trial.


305. Awarding plaintiffs their costs and prejudgment interest and granting such other and further relief as this Court may deem just and proper

JURY DEMAND

306. Plaintiffs hereby demand trial by jury of all issues properly triable thereby.

Dated: New York, New York
May 29, 1996

CONSTANTINE & PARTNERS, PC

By: 
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